

HOUSE BILL REPORT

SSB 5046

As Passed House:
February 28, 2010

Title: An act relating to placing symphony musicians under the jurisdiction of the public employment relations commission for purposes of collective bargaining.

Brief Description: Placing symphony musicians under the jurisdiction of the public employment relations commission for purposes of collective bargaining.

Sponsors: Senate Committee on Labor, Commerce & Consumer Protection (originally sponsored by Senators Kohl-Welles, Keiser, Kline and Franklin).

Brief History:

Committee Activity:

Commerce & Labor: 2/23/10 [DP].

Floor Activity:

Passed House: 2/28/10, 60-36.

Brief Summary of Substitute Bill

- Establishes procedures for collective bargaining between certain private symphony orchestras and symphony musicians.
- Authorizes the Public Employment Relations Commission to administer and enforce these procedures.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Chandler and Crouse.

Staff: Jill Reinmuth (786-7134).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The federal National Labor Relations Act (NLRA) governs collective bargaining rights in the private sector in the United States. The NLRA states that workers under its jurisdiction have, among other rights, the right to self-organization, to form, join, or assist labor organizations, and to bargain collectively through representatives of their own choosing, and also have the right to refrain from such activities subject to certain limits. The NLRA is administered and enforced by the National Labor Relations Board (NLRB).

The NLRA excludes certain groups of workers in the private sector from its coverage. In addition, the NLRB limits its jurisdiction to cases which have a substantial effect on interstate commerce. For example, the NLRB's jurisdiction does not extend to symphony orchestras with gross annual revenues of less than \$1 million.

No Washington laws provide specific procedures for implementing or enforcing collective bargaining between private sector employees and employers. The state Public Employees' Collective Bargaining Act (PECBA) and other laws govern collective bargaining rights in the public sector. The PECBA and most other public sector collective bargaining laws are administered and enforced by the Public Employment Relations Commission.

Summary of Bill:

Procedures are established for implementing and enforcing collective bargaining between certain private symphony orchestras and symphony musicians employed by such orchestras. These procedures are administered and enforced by the Public Employment Relations Commission (PERC).

Definitions.

"Employer" is defined as a symphony orchestra with gross annual revenue of more than \$300,000 that does not meet the National Labor Relations Board's jurisdictional standards. "Employer" includes persons acting as the employer's agent.

Numerous other terms are defined, including "bargaining representative," "commission," "executive director," "labor dispute," "labor organization," and "person."

Organizing Rights.

Employers are prohibited from interfering with, restraining, coercing, or discriminating against symphony musicians in the free exercise of their right to organize and designate representatives for the purpose of collective bargaining.

Bargaining Units and Representatives.

The bargaining unit and representative may be determined by agreement between symphony musician employees and employers. However, if the parties disagree, the PERC must be invited to intervene.

In determining the bargaining unit, the PERC must consider: the duties, skills, and working conditions of the symphony musicians; the history of collective bargaining by the symphony

musicians and their representatives; the extent of organization among the symphony musicians; and the desire of the symphony musicians.

In determining the bargaining representative, the PERC must compare signatures on bargaining authorization cards or conduct a secret ballot election.

Collective Bargaining.

Both employers and exclusive bargaining representatives have a mutual obligation to negotiate in good faith and to execute a written agreement with respect to mandatory subjects of bargaining (grievance procedures and personnel matters, including wages, hours, and working conditions).

Agreements may contain union security provisions, but closed shop provisions are not authorized. Agreements containing union security provisions must safeguard the right of nonassociation of employees based on bona fide religious tenets or teachings of a church or religious body of which the symphony musician is a member.

Agreements also may provide for binding arbitration of labor disputes arising from the application or interpretation of the collective bargaining agreement.

Agreements that provide for automatic renewal or extension are not valid. Agreements that provide for terms of more than three years also are not valid.

Impasse Procedures.

If a collective bargaining agreement cannot be concluded, the parties may submit the dispute to the PERC. If an employer implements its last and best contract offer where there is no settlement, allegations that either party is violating the terms of the implemented offer are subject to arbitration under any procedures that are in the implemented offer or, if no procedures are in the offer, in the parties' last contract.

Unilateral Implementation.

Following termination of an agreement, all of the terms and conditions of the agreement remain in effect until the effective date of a subsequent agreement, but not to exceed one year from the original termination date. After the one year period, the employer may unilaterally implement according to law.

These provisions do not apply to: provisions of a collective bargaining agreement that the parties agree to exclude from coverage; provisions in an agreement that have separate and specific termination dates; and agreements in effect or being bargained on the bill's effective date.

Grievance Arbitration.

The parties may request the PERC to appoint an arbitrator to assist in the resolution of labor disputes arising from the application of the matters contained in a collective bargaining

agreement. The arbitrator must conduct the arbitration in the manner provided for in the agreement. The PERC may not collect fees or charges for its services.

Unfair Labor Practices.

Unfair labor practices are enumerated for both employers and bargaining representatives.

Employers may not: interfere with, restrain, or coerce symphony musicians in the exercise of their rights; control, dominate, or interfere with a bargaining representative; discriminate against a symphony musician who has filed an unfair labor practice charge or who has given testimony; or refuse to engage in collective bargaining.

Bargaining representatives may not: interfere with, restrain, or coerce employees in the exercise of their rights; induce an employer to commit an unfair labor practice; discriminate against a symphony musician who has filed an unfair labor practice charge or who has given testimony; or refuse to engage in collective bargaining.

The PERC must prevent unfair labor practices and issue remedial orders. An unfair labor practice complaint must be filed with the PERC within six months of the unfair practice. The PERC must issue a cease and desist order if a person has engaged in or is engaging in an unfair labor practice. The PERC also may require the person to pay damages or reinstate employees. The PERC may petition the superior court for enforcement of its order and appropriate temporary relief.

The PERC's actions must follow the requirements of the Administrative Procedures Act (APA) and the APA's right of judicial review applies to the PERC's actions and rules.

Strikes/Lockouts.

No provisions address strikes by symphony musicians or lockouts by employers.

Rulemaking.

The PERC may adopt rules in conformity with the law's intent and purpose and consistent with the best standards of labor-management relations.

Appropriation: None.

Fiscal Note: Requested on February 18, 2010.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill will cover musicians who are not covered under the National Labor Relations Act. The larger symphonies are covered, but the smaller ones are not. They will

be able to address concerns about working conditions. The stakeholders share an interest in making sure small symphonies thrive, and worked long and hard to forge an agreement.

(Opposed) This bill applied to all small employers and their employees when it was first introduced, and was narrowed to symphony orchestras later. Once the private sector is put under the jurisdiction of the public sector, there is no going back. There will be a yearly fight between business and labor about the gradual expansion of these provisions into other areas.

This bill would cover a dozen small employers, and came about because of difficulties with one employer. The employees used existing tools to address the problems with that employer, and an agreement was struck. That employer's revenues have fallen below the threshold in this bill. That employer would not be covered by this bill.

This bill sets different rules for these private sector employers and workers than others, because it contains a card check provision.

Persons Testifying: (In support) Senator Kohl-Welles, prime sponsor; and Joan Sandler, American Federation of Musicians.

(Opposed) Kris Tefft, Association of Washington Business; and Patrick Connor, National Federation of Independent Business.

Persons Signed In To Testify But Not Testifying: None.